

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TG-111672
TRANSPORTATION COMMISSION,	)	
	)	ORDER 06
Complainant,	)	
	)	
v.	)	FINAL ORDER REJECTING TARIFF
	)	FILINGS
MURREY’S DISPOSAL COMPANY,	)	
INC., G-9,	)	
	)	
Respondent.	)	
.....	)	
	)	
WASHINGTON UTILITIES AND	)	DOCKET TG-111674
TRANSPORTATION COMMISSION,	)	
	)	ORDER 06
Complainant,	)	
	)	
v.	)	FINAL ORDER REJECTING TARIFF
	)	FILINGS
AMERICAN DISPOSAL COMPANY,	)	
INC., G-87,	)	
	)	
Respondent.	)	
.....	)	
	)	
WASHINGTON UTILITIES AND	)	DOCKET TG-111681
TRANSPORTATION COMMISSION,	)	
	)	ORDER 05
Complainant,	)	
	)	
v.	)	FINAL ORDER REJECTING TARIFF
	)	FILINGS
MASON COUNTY GARBAGE CO.,	)	
INC. D/B/A MASON COUNTY	)	
GARBAGE, G-88,	)	
	)	
Respondent.	)	
	)	

..... )  
WASHINGTON UTILITIES AND ) DOCKET TG-120073  
TRANSPORTATION COMMISSION, )  
 ) ORDER 04  
Complainant, )  
 )  
v. ) FINAL ORDER REJECTING TARIFF  
 ) FILINGS  
HAROLD LEMAY ENTERPRISES, )  
INC., d/b/a PIERCE COUNTY )  
REFUSE, G-98, )  
 )  
Respondent )  
..... )

**BACKGROUND**

- 1 On September 15, 2011, in Docket TG-111672, Murrey’s Disposal Company, Inc. (Murrey’s Disposal) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff No. 25, designated as Tariff pages 1, 21, 25, 27, 28, 30, 46, 47, 48 and 49.
- 2 On September 15, 2011, in Docket TG-111674, American Disposal Company, Inc. (American Disposal) filed with the Commission revisions to its currently effective Tariff No. 25, designated as Tariff pages 1, 21, 25, 27, 28, 30, 46, 47, 49 and 49.
- 3 Murrey’s Disposal and American Disposal both propose to increase the amount they pay to single family and multi-family customers for the value of the recyclable materials that they collect in their residential recycling collection service. The monthly credit for single family customers of each company would increase from \$1.31 to \$1.69 and the monthly credit for multi-family customers would increase from \$0.67 per yard to \$0.76 per yard for each pickup. Murrey’s Disposal and American Disposal also filed a request to retain fifty percent of the revenue they receive from the sale of recyclable materials that they collect in their residential single and multi-family recycling collection service from November 1, 2011, to October 31, 2012 (subsequently extended to December 31, 2012).
- 4 On September 16, 2011, in Docket TG-111681, Mason County Garbage Co., Inc. d/b/a Mason County Garbage (Mason County Garbage) filed with the Commission

revisions to its currently effective Tariff No. 13, designated as Tariff pages 1, 21 and 21A.

- 5 In its filing, Mason County Garbage proposes to increase the amount it pays to single family customers for the value of the recyclable materials that it collects in its residential recycling collection service. The monthly credit for single family customers would increase from \$1.75 to \$2.13. Mason County Garbage also requested the Commission allow it to retain thirty percent of the revenue it receives from the sale of recyclable materials that it collects in its residential single-family recycling collection service from November 1, 2011, to October 31, 2012.
- 6 On October 31, 2011, the Commission, by Order 01, suspended operation of the tariffs in Dockets TG-111672, TG-111674, and TG-111681.
- 7 On November 1, 2011, the Commission, by Order 02, consolidated Dockets TG-111672, TG-111674, and TG-111681. The Commission conducted a prehearing conference in these dockets on November 10, 2012, and entered a prehearing conference order establishing a procedural schedule on November 15, 2011. The Commission subsequently issued multiple notices revising the procedural schedule in response to the parties' requests.
- 8 On January 13, 2012, in Docket TG-120073, Harold LeMay Enterprises, Inc., d/b/a Pierce County Refuse (LeMay or collectively with Murrey's Disposal, American Disposal, and Mason County Garbage, Companies) filed with the Commission revisions to its currently effective Tariff No. 9, designated as Tariff pages 1 and 21. LeMay proposes to increase the amount it pays to customers for the value of the recyclable materials that it collects in its residential recycling collection service. The monthly credit for customers would increase from \$0.91 to \$1.97.
- 9 On January 30, 2012, LeMay filed a substitute revised page 21 reducing the proposed credit from \$1.97 to \$1.75, to reflect \$139,812 less in commodity sales proceeds received from LeMay's recycling processor, SP Recycling.
- 10 On February 23, 2012, the Commission, by Order 01, suspended operation of the tariff, allowing revenue sharing and recyclable commodity revenue adjustments on a temporary basis, subject to refund.
- 11 Upon request of LeMay and Commission Staff, the Commission delayed conducting a prehearing conference in Docket TG-120073 until September 26, 2012, to provide the

parties with the opportunity to engage in settlement negotiations. On October 5, 2012, the Commission entered orders consolidating Dockets TG-111672, TG-111674, TG-111681, and TG-120073 for determination pursuant to WAC 480-07-320 and adopting the same procedural schedule for all of the consolidated dockets.

- 12 The parties in all of the consolidated dockets agreed to waive an initial order and to waive the statutory deadline by which the Commission is obligated to act on the tariff filings until January 1, 2013.
- 13 On October 26, 2012, the parties filed cross-motions for summary determination and filed responses to each other's motions on November 13, 2012. The motions and responses addressed the issues of the extent to which the Companies are entitled to keep retained revenues in excess of the expenses incurred under the 2010-11 and 2011-12 recycling revenue sharing plans (Plans).
- 14 On November 15, 2012, the Commission issued a notice requesting that the parties provide position statements on whether the 2011-12 Plans demonstrate how the retained revenues will be used to increase recycling. On November 28, 2012, the Companies filed their position statement, and Staff filed a letter stating that upon review of that statement, Staff is satisfied that "the Companies have demonstrated how the retained revenues expended on plan activities will be used to increase recycling."

## **DISCUSSION**

- 15 The Commission in this proceeding must once again interpret RCW 81.77.185 to determine the propriety of Plans and associated retained revenues and commodity credit tariffs. Specifically, we must decide (1) whether the Companies are entitled to keep all unspent amounts from the revenues retained under their 2010-11 Plans; (2) whether the 2011-12 Plans demonstrate how the retained revenues will be used to increase recycling; and (3) if the 2011-12 Plans make the requisite demonstration, whether the Commission can and should limit the amount of unspent revenues retained during that Plan period that the Companies may keep.
- 16 We conclude that having approved commodity credits based on recycling revenue sharing for the Companies' 2010-11 Plan periods, RCW 81.77.185 does not authorize the Commission to revise the Plans or the credits retroactively. The Companies thus are entitled to keep all unspent revenues they retained during those Plan periods. The 2011-12 Plans, however, are subject to Commission review in this proceeding and fail

to demonstrate how the retained revenues will be used to increase recycling as required by RCW 81.77.185. The Commission, therefore, denies the Companies' request to retain any portion of their revenues from the sale of recyclable materials during the 2011-12 Plan periods.

**The Companies May Keep Unspent Revenues Retained under Prior Plans.**

- 17 Each of the Companies requested authority under RCW 81.77.185 to retain a portion of their recycling revenues in conjunction with the 2010-11 Plans they negotiated with Pierce or Mason County. The Companies filed tariff revisions establishing credits for the remaining recycling revenues to be passed on to residential customers. The Commission took no action on those filings, allowing the commodity credits to go into effect by operation of law, and authorized each Company to retain the percentage of revenues it requested subject to complying with Plan requirements. The Commission further required each Company to report by the end of the Plan period the amount of recycling revenues retained, the amount spent on Plan activities, and the effect those activities had on increasing recycling.<sup>1</sup>
- 18 The reports the Companies filed in compliance with the Commission orders revealed that the Companies retained far more recycling revenues during the 2010-11 Plan period than they spent on recycling activities. According to the parties' Stipulated Exhibit A, Murrey's Disposal and American Disposal retained \$1,450,320 in recycling revenues of which \$743,124 was unspent; Mason County Garbage retained \$124,599 and did not spend \$69,701;<sup>2</sup> and LeMay retained \$490,499 with \$277,883 of that amount remaining unspent. The Companies contend they are entitled to keep these unspent retained revenues. Staff disagrees and proposes that the Commission limit the Companies to an incentive bonus of the same percentage of expenditures that the Commission allowed Murrey's Disposal and American Disposal to keep under their 2009-10 Plans (approximately 19.5 percent) and that the remainder of the unspent revenues be passed on to residential customers.
- 19 We agree with Staff that we did not anticipate the magnitude of the Companies' unspent retained revenues under the 2010-11 Plans and that those revenues vastly

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<sup>1</sup> *In re Petition of American Disposal*, Docket TG-101548, Order 01 ¶¶ 17-19 (Oct. 28, 2010); *In re Petition of Murrey's Disposal*, Docket TG-101545, Order 01 ¶¶ 17-19 (Oct. 28, 2010); *In re Petition of Mason County Garbage*, Docket TG-101542, Order 01 ¶¶ 16-18 (Oct. 28, 2010); see *WUTC v. LeMay*, Docket TG-110103, Order 01 ¶¶ 30-31 (Feb. 25, 2011); *id.*, Order 02 ¶¶ 8-11.

<sup>2</sup> Mason County Garbage seeks to keep only \$15,347 of its unspent retained revenues.

exceed any reasonable incentive to engage in activities to increase recycling. We would substantially reduce the amount of unspent retained revenues the Companies may keep if we had the authority to do so. Unfortunately, we do not have that authority.

- 20 We are constrained in our ability to address the Companies' excessive recycling revenue retention by RCW 81.77.185 and our prior orders. The statute requires that a Plan "demonstrate[] how the revenues *will be used* to increase recycling." (Emphasis added.) As we have previously concluded, this language authorizes only a prospective review:

The legislature used the future tense, "will be used," and we must give effect to that language. The Commission will review anticipated expenditures at the time a plan is submitted for approval to determine their permissibility. The statute does not contemplate a review of actual expenditures at the end of the Plan period as a condition of approval of the Plan, and we will not imply such a requirement.<sup>3</sup>

- 21 We approved the Companies' requests for recycling revenue sharing based on their 2010-11 Plans and allowed the commodity credit tariffs implementing that revenue sharing to take effect by operation of law without condition other than compliance with Plan requirements. Having previously exercised our statutory authority, Staff does not offer, and we are not aware of, any legal basis on which we can revisit those decisions after the end of the Plan period based on the actual results of implementation of the Plans.<sup>4</sup> We therefore cannot retroactively modify the commodity credits that were effective during the 2010-11 Plan periods and cannot disturb the windfall profits the Companies made during that time.

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<sup>3</sup> *In re the Commission's Investigation of Recycling Revenue Sharing Plans*, Docket TG-112162, Interpretive and Policy Statement on RCW 81.77.185 ¶ 17 (May 30, 2012). A related Commission rule similarly contemplates only a prospective review of "proposed" programs to encourage recycling. WAC 480-70-351.

<sup>4</sup> We note, however, that our decision is based on the circumstances of this case, including the fact that the Companies did not make the Commission aware of the amount of unspent retained revenues until after the end of the Plan periods. If issues arise during the Plan period, we interpret our authority under the statute to enable the Commission to make prospective adjustments to the recycling revenue sharing to which a company is entitled.

**The Proposed Plans Fail to Demonstrate how Retained Revenues Will Be Used to Increase Recycling.**

22 The 2011-12 Plans are a different matter. Unlike the commodity credits established pursuant to the 2010-11 Plans, the Commission suspended the tariffs filed in these dockets and permitted recycling revenue sharing only on a temporary basis subject to refund or credit.<sup>5</sup> Accordingly, we must assess whether the suspended commodity credits are fair, just, reasonable, and sufficient. That decision, in turn, requires that we determine whether the 2011-12 Plans on which the tariffs are based demonstrate how the retained revenues will be used to increase recycling as RCW 81.77.185 requires.

23 We begin, as we must, with the language of the statute:

The commission shall allow solid waste collection companies collecting recyclable materials to retain up to fifty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.<sup>6</sup>

Again, the key statutory language is that the Commission must allow a company to retain a portion of its recycling revenues only if its Plan “demonstrates how the revenues will be used to increase recycling.” We find that neither the Companies nor the Plans make the requisite demonstration.

*Murrey’s Disposal, American Disposal, and LeMay*

24 The Plans for Murrey’s Disposal, American Disposal, and LeMay submitted as part of the Companies’ Position Statement assign revenue percentages, rather than dollar amounts, to various tasks the Companies must perform under each Plan. The Plans do not include an estimate of anticipated retained revenues, without which the assigned percentages are meaningless. Nor do the Plans make any attempt to quantify the costs the Companies anticipate incurring to undertake Plan activities. The Plans

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<sup>5</sup> Order 01, Order paragraphs 1-2.

<sup>6</sup> RCW 81.77.185.

thus fail to establish any rational relationship between those activities and retained revenues and accordingly do not demonstrate how the retained revenues will be used to increase recycling.

- 25 The Companies' Position Statement concedes that the Plans "did not contain itemized budget task allocations and other itemized elements," but offers a "summary of the expenditures to date attempt to now cross-reference plan elements with corresponding expenditures."<sup>7</sup> As discussed above, however, RCW 81.77.185 requires the Plans to demonstrate how the retained revenues *will be* used to increase recycling, not how the revenues *have been* used for that purpose. We thus consider only whether the Plans themselves and relevant evidence in existence at the time those Plans become effective to determine whether the Plans make the requisite demonstration.
- 26 The evidence in existence when the Companies requested to retain a portion of their recycling revenues during the 2011-12 Plan period were the reports the Companies filed of the results of their 2010-11 Plans. As discussed above, those reports reflect that most of the retained revenues under the prior Plans were *not* used to increase recycling. Nothing in the language of the 2011-12 Plans even addresses this unacceptable past performance, much less provides any assurance that implementing those Plans will not result in similar inequities. The available evidence and the Plan language demonstrate that the 2011-12 Plans do not demonstrate how the revenues the Companies requested to retain will be used to increase recycling.
- 27 Even if the Commission were to consider the 2011-12 Plan expenditure data the Companies have provided, that evidence would support our determination. The Companies identify costs for only a small fraction of the activities identified in the Plans, demonstrating that the Companies do not incur any costs to perform the vast majority of Plan tasks, even though the Plan assigns a percentage of revenues to each of those tasks. Equally striking, each company has devoted *less than half* of the total recycling revenues the company retained.<sup>8</sup> Murrey's Disposal and American Disposal

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<sup>7</sup> Position Statement ¶ 3.

<sup>8</sup> According to the Position Statement, Murrey's Disposal and American Disposal retained \$1,125,534 in recycling revenues and spent \$387,512 on Plan activities. LeMay retained \$403,522 in recycling revenues and spent \$162,335. We note that these figures are roughly comparable to the retained and spent revenues under the 2010-11 Plans for these companies reflected in Stipulated Exhibit A. Those Plans are not included in the record in this proceeding, but the vast disparity between retained and spent revenues under the prior plans further supports our determination that the 2011-12 Plans fail to demonstrate how retained revenues will be used to increase recycling.



have spent only *34 percent* of their retained revenues on Plan activities. The Companies' expenditure data thus confirms that the Plans arbitrarily assign revenue percentages to tasks without any regard whatsoever to the Companies' actual expenditures.

28 The remainder of the Companies' Position Statement describes how the Plan activities are designed to increase recycling. While the nature and anticipated effectiveness of recycling activities are a vital component of a Plan, the statute requires the Plan to demonstrate how the *revenues* will be used to increase recycling. Revenues fund activities that will increase recycling, and both the legislature and the Commission anticipate that companies will retain only the revenues necessary to accomplish that ultimate goal. The Plans here fail to demonstrate any link between the retained revenues and an increase in recycling, and accordingly the Plans do not support the commodity credits the Companies have included in their tariff filings.

29 We are also troubled by a provision in the Plans for a direct payment of a portion of the retained revenues to Pierce County "to support county-wide recycling programs and sustainability initiatives."<sup>9</sup> Such a provision is problematic in light of the vagueness of the use of those funds and the County's statutory role to certify the Plans. At a minimum, these provisions raise appearance of fairness and objectivity concerns. We need not reach that issue, having found the Plans deficient on other grounds, but we expect that future Plans either will not include distribution of retained revenues directly to the local government entity certifying the Plan or will demonstrate that such payments comply with both the letter and the spirit of RCW 81.77.185.

*Mason County Garbage*

30 Mason County Garbage did not file its Plan or provide sufficient factual support for the amount of the commodity credits the Commission authorized that company to issue on a temporary basis subject to refund or credit.<sup>10</sup> The Companies' Position

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<sup>9</sup> Position Statement, 2011-12 Company Recycling Plan: Pierce County Single-Cart Recycling Program (Updated September 2011), Section V.D.

<sup>10</sup> We note that Mason County Garbage provided some evidence in response to the Bench Requests that the Commission issued, but without the Plan itself, the Commission cannot determine whether the Plan demonstrates how the revenues will be used to increase recycling. Mason County Garbage's response to the bench requests, moreover, at least suggests that the Plan does not link anticipated expenses to specific tasks and thus suffers from the same infirmity as the Plans the other Companies submitted that we have rejected.

Statement states that Mason County Garbage was not included “because of its successive filing on September 14, 2012 and Order No. 1 in Docket TG-121513.”<sup>11</sup> That docket, however, addresses Mason County Garbage’s 2012-13 Plan, not the 2011-12 Plan at issue in this proceeding. Nor does paragraph 3 in Order 01 in that docket “ostensibly announce[] the Commission’s current satisfaction with the performance criteria and money spent on activities to increase recycling,” as the Companies assert.<sup>12</sup> That paragraph merely summarizes information Mason County Garbage included in its report for the 2011-12 Plan period.

- 31 Mason County Garbage bears the burden to prove that its 2011-12 Plan demonstrates how the retained revenues will be used to increase recycling during that period.<sup>13</sup> Nothing in Docket TG-121513 relieves Mason County Garbage from its burden to prove in this proceeding that its 2011-12 Plan makes the requisite demonstration, and Mason County Garbage has not carried that burden.

### CONCLUSION

- 32 The Companies are entitled to retain the unspent retained revenues under their 2010-11 Plans, but their 2011-12 Plans fail to demonstrate how retained revenues will be used to increase recycling as RCW 81.77.185 requires. The Commission, therefore, finds the Companies are not entitled to retain any portion of the recycling revenues they generated during that period and rejects the commodity credit tariffs the Companies filed pursuant to their Plans. As the statute requires, the Companies must pass all of the recycling revenues they collected during the 2011-12 Plan periods to their residential customers.<sup>14</sup>

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<sup>11</sup> Position Statement n.1.

<sup>12</sup> *Id.*

<sup>13</sup> Docket TG-11168, Order 01 ¶ 19.

<sup>14</sup> We recognize that as a result of this aspect of our decision, the Companies will have incurred expenses to engage in 2011-12 Plan activities that they will not recover from 2011-12 recycling revenues, but we observe that this Order in its entirety will enable at least three of the four Companies to recover all of the costs they incurred in the 2010-11 and 2011-12 Plan periods from the retained revenues under the 2010-11 Plan period. Indeed, LeMay will keep approximately \$115,000 (\$277,883 in unspent retained revenues from the 2010-11 Plan period minus \$162,335 in 2011-12 program costs through October 31, 2012) in excess retained recycling revenue while Murrey’s Disposal and American Disposal will keep approximately \$355,000 (\$743,124 in unspent retained revenues from the 2010-11 Plan period minus \$387,512 in 2011-12 program costs through October 31, 2012), each of which significantly exceeds the five percent of Plan expenditures the Commission believes is appropriate for an incentive bonus.

**ORDER**

THE COMMISSION ORDERS that

- 33 (1) Murrey's Disposal Company, Inc., American Disposal Company, Inc., Mason  
County Garbage Co., Inc. d/b/a Mason County Garbage, and Harold LeMay  
Enterprises, Inc. d/b/a Pierce County Refuse are entitled to keep all recycling  
revenues they retained during their 2010-11 recycling revenue sharing plan  
periods.
- 34 (2) The tariff filings the Commission suspended in Order 01 in each of these  
dockets are REJECTED.
- 35 (3) Within 10 days of the date of this Order, Murrey's Disposal Company, Inc.,  
American Disposal Company, Inc., Mason County Garbage Co., Inc. d/b/a  
Mason County Garbage, and Harold LeMay Enterprises, Inc. d/b/a Pierce  
County Refuse shall each make compliance filings that credit to residential  
customers all recycling revenues each company retained during its 2011-12  
recycling revenue sharing plan period.
- 36 (4) The Commission retains jurisdiction over the subject matter in, and parties to,  
these dockets to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective December 28, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

**NOTICE TO PARTIES:** This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.